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OFFICE OF GENERAL COUNSEL

MEMORANDUM

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Association of Independent Designated Entities and David Meredith v. FCC & USA, No. 94-1642. Filing of a new Petition for Review in the United States Court of Appeals for the District of Columbia Circuit

DATE: October 12, 1994

Docket No(s). PP 93-253, GEN 90-314 and  
ET 92-100

File No(s).

This is to advise you that on September 26, 1994, Association of Independent Designated Entities and David Meredith, filed a Section 402(a) Petition for Review in the District of Columbia Circuit of the FCC decision: Implementation of Section 309(j) of the Communications Act - Competitive Bidding Narrowband PCS and Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services, FCC 94-219, released August 17, 1994.

Petitioners seek review of the Order amending certain rules governing the use of competitive bidding to select between mutually exclusive applications for the narrowband PCS radio service.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed this case as No. 94-1642 and the attorneys assigned to handle the litigation are John Ingle and James Carr.

  
Daniel M. Armstrong

cc: General Counsel  
Office of Public Affairs  
Shepard's Citations

United States Court of Appeals  
For the District of Columbia Circuit

REC'D SEP 26 1994

In The  
**RON GARVIN** UNITED STATES COURT OF APPEALS  
**CLERK** For The District Of Columbia Circuit

United States Court of Appeals  
For the District of Columbia Circuit

FILED SEP 26 1994

RON GARVIN  
CLERK

Association of Independent  
Designated Entities

and

David Meredith

Petitioners,

v.

Federal Communications Commission  
and United States of America,

Respondents.

94-1642

Case No. \_\_\_\_\_

PETITION FOR REVIEW

The Association of Independent Designated Entities ("AIDE") and Mr. David Meredith, individually and as a member of AIDE, by their attorney hereby jointly petition this Court for review of the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking of the Federal Communications Commission ("FCC") in the proceedings Implementation of Section 309(j) of the Communications Act - Competitive Bidding Narrowband PCS and Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services, 9 FCC Rcd \_\_\_\_ (FCC 94-215, released August 17, 1994) (PP Docket 93-253, GEN Docket No. 90-314, ET Docket No. 92-100) ("Third Memorandum Opinion and Order"). A copy of the Third Memorandum Opinion and Order is attached.

In a bifurcated decision, the Third Memorandum Opinion and Order both adopted final rules governing the competitive bidding for narrowband PCS licenses (reported at 59 FR 44058, August 26, 1994) and proposed additional rules for such bidding (separately reported at 59 FR 44109, August 26, 1994). The final rules are discussed in paragraphs 5-63, 123-26, and 136-37 of the Third Memorandum Opinion and Order, and appear in the Appendix thereto. The proposed rules are discussed in paragraphs 64-122 and 127-35 of the Third Memorandum Opinion and Order. Thus, the FCC distinctly has separated the final and proposed rules, both in the text of its decision and in its Federal Register notices.

Further, the subject matter of the proposed rules is ancillary to the final rules for which review is sought herein. For all these reasons, review of the final rules adopted by the Third Memorandum Opinion and Order is appropriate at this time.

This Petition is filed pursuant to 28 U.S.C. §§ 2342, 2344; Section 402(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 402(a); and Rule 15 of the Federal Rules of Appellate Procedure. Venue lies in this Court pursuant to 28 U.S.C. § 2343.

In the Third Memorandum Opinion and Order, the FCC adopted and amended certain rules governing its use of competitive bidding (auctions) to select between mutually exclusive applications for the narrowband PCS radio service. One significant effect of those rules is to prohibit pre-auction settlements between mutually exclusive applicants for narrowband PCS licens-

es, a result inconsistent with the competitive bidding provision of the Communications Act, 47 U.S.C. §309(j). The Commission's auction rules are unreasonable, arbitrary and capricious, and in violation of the Communications Act.

Also in the Third Memorandum Opinion and Order, the FCC adopted certain rules governing its processing of narrowband PCS applications without providing an adequate opportunity for notice and comment on such proposed rules. The Commission thus violated the Administrative Procedure Act; 5 U.S.C. §553, and its own rules, 47 C.F.R. §1.413. The Commission's auction rules are unreasonable, arbitrary and capricious, and in violation of the Communications Act and the Administrative Procedure Act.

AIDE is an unincorporated association, with membership limited to persons and entities likely to be classified as "Designated Entities" under the Communications Act, 47 U.S.C. § 309(j). AIDE was formed for the purpose of representing the interests of designated entities before the FCC. AIDE actively participated in the proceeding below, and the interests of AIDE and its members is directly affected by the rules adopted in the Third Memorandum Opinion and Order.

Mr. Meredith is a member of AIDE. He directly and indirectly holds numerous interests in FCC-licensed radio systems. He presently intends to participate in the Commission's auction process for narrowband PCS, and possibly other services as well.

AIDE and Mr. Meredith request that the Court review the Third Memorandum Opinion and Order and the FCC's narrowband PCS

auction and application-processing rules and set them aside on the grounds that they are unlawful under the Communications Act and the Administrative Procedure Act, are arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence and reasoned analysis, and are otherwise contrary to law.

Respectfully submitted,

Association of Independent  
Designated Entities  
David Meredith

By William J. Franklin  
William J. Franklin  
DC Bar No. 939785  
Their Attorney

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September 26, 1994

#### CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 1994, I delivered (via U.S. first-class mail) copies of the foregoing Petition for Review to the Federal Communications Commission, the U.S. Department of Justice, and all parties to the proceeding.

By: William J. Franklin  
William J. Franklin